

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ALEXANDER GONZALAS,)	
)	
Plaintiff(s),)	Case No. 2:16-cv-02273-JAD-NJK
)	
)	ORDER
GEORDAN LOGAN, et al.,)	
)	(Docket No. 1)
Defendant(s).)	
)	

This matter is before the Court on Plaintiff Alexander Gonzalas' Application to Proceed *In Forma Pauperis*. Docket No.1. Plaintiff is a prisoner proceeding in this action *pro se*. Plaintiff has submitted the financial affidavit and inmate trust account statement required by 28 U.S.C. § 1915(a)(2). Plaintiff's financial certificate contains incorrect numbers, as compared to his inmate trust account statement. Docket No. 1 at 4-5. Accordingly, Plaintiff's application to proceed *in forma pauperis* is **DENIED**. The Court will give Plaintiff 30 days to file a renewed application.

Additionally, though the Court has yet to screen Plaintiff's complaint, Plaintiff attempts to state claims under 42 U.S.C. § 1983, challenging whether he received effective assistance of counsel from two attorneys in state court. *See, e.g.*, Docket No. 1-1 at 3, 5 ("Since Lawyer . . . has been appointed, he's continuously misled me . . ." and "My lawyer continuously mis-lead's [sic] me - and tell's [sic] me un-truth's [sic], he lies to me and does not defend me - let alone properly represent me."). It is well settled that court-appointed defense counsel are not acting under color of law for § 1983 purposes. *See, e.g., Polk Cty. v. Dodson*, 454 U.S. 312, 318 n.7 (1981) (noting that a private attorney, even one appointed by the court, does not act under the color of state law for purposes of 42 U.S.C. § 1983 when performing the traditional role of an attorney). Therefore, because

1 Plaintiff's attorneys were not acting under color of state law, Plaintiff cannot state claims against
2 them under 42 U.S.C. § 1983.

3 If Plaintiff files a renewed Application to Proceed *In Forma Pauperis* and the Court grants
4 it, Plaintiff will be required, under 28 U.S.C. §§ 1915(b)(2), as amended by the Prison Litigation
5 Reform Act of 1995, to pay the full \$350 filing fee, even if his complaint is dismissed, to pay the
6 full \$350 filing fee, even if his complaint is dismissed. As set forth above, the Court believes
7 Plaintiff's claims will not survive the pleading stage. The Court will allow Plaintiff thirty days to
8 file an
9 amended Application to Proceed *In Forma Pauperis*. If Plaintiff does not file an amended
10 application, the Court will recommend dismissal of the instant case.

11 Based upon the foregoing,

12 **IT IS ORDERED** that:

- 13 1. Plaintiff's Application to Proceed *In Forma Pauperis* (Docket No. 1) is **DENIED**
14 without prejudice.
- 15 2. Plaintiff shall file a renewed Application to Proceed *In Forma Pauperis*,
16 accompanied by a signed, completed financial certificate and a certified statement
17 from his inmate trust account for the past six months.
- 18 3. The Clerk of Court shall send Plaintiff a blank application form for *pro se* litigants
19 who are incarcerated.
- 20 4. Plaintiff shall have until **November 4, 2016** to file a renewed Application to Proceed
21 *In Forma Pauperis*. If Plaintiff does not file an amended application by November
22 4, 2016, the Court will recommend dismissal of the instant case.

23 Dated: October 5, 2016

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25 _____
26 NANCY J. KOPPE
27 United States Magistrate Judge
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